

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814

October 15, 1992

ALL-COUNTY LETTER NO. 92-91

TO: ALL COUNTY COUNSELS
ALL COUNTY WELFARE DIRECTORS
ALL COUNTY PROBATION DEPARTMENTS
ALL PUBLIC AND PRIVATE ADOPTION
AGENCIES
ALL SDSS ADOPTIONS DISTRICT OFFICES

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
☐ Federal Law or Regulation
Change
☐ Court Order or Settlement
Agreement
☐ Clarification Requested by
One or More Counties
☒ Initiated by SDSS

SUBJECT: 1. WHEN AN ADOPTION CASE RECORD IS ESTABLISHED.
2. GUIDELINES FOR DISCLOSING INFORMATION OBTAINED DURING THE
PRELIMINARY ASSESSMENT (to be used in conjunction with ACL
No. 91-32).

As child welfare services (CWS) case records and adoption case records are governed by different confidentiality statutes, it is imperative that counties recognize the point where the adoption case record begins. Agencies must take steps to maintain the separate integrity of the adoption case record to avoid disclosure of confidential adoption case record information to unauthorized persons. The following guidelines will enable counties to put in place procedures ensuring that the confidentiality requirements of both CWS case records and adoption case records are met. Consequently, this letter:

1. Clarifies when the adoption case record is officially established for the purpose of determining applicability of adoption case record confidentiality requirements (Title 22 California Code of Regulations Section 35045(a) and Section 89182(c)); and
2. Provides suggested guidelines for adoption agencies to follow when releasing information obtained during the preparation of the preliminary assessment of the adoptability of a dependent child of the juvenile court.

WHEN IS AN ADOPTION CASE RECORD ESTABLISHED?

For purposes of determining when the requirements of adoption case record confidentiality apply, the adoption case record for the child is established when a parent has signed a relinquishment giving the child to the licensed adoption agency or when parental rights regarding the child have been terminated by court action and the court issues an order for the child to be placed for adoption.

The adoption case record for the prospective adoptive parents is established when their completed application for adoption is accepted by the adoption agency. The home study file, including supporting documents, for families with previously approved home studies conducted by a licensed California adoption agency is included in this description of adoption case record even though the prospective adoptive parents have not formally applied to adopt a specific child.

SUGGESTED GUIDELINES FOR RELEASE OF INFORMATION AS PART OF THE ADOPTABILITY PRELIMINARY ASSESSMENT:

Under Welfare and Institutions (W&I) Code Section 366.21(i) and Section 366.22(b), the court, when it orders a hearing pursuant to W&I Code Section 366.26, will "...direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment...." Included in the assessment is a preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent and an analysis of the likelihood that the minor will be adopted (W&I Code Section 366.21(i)(4) and (6) and Section 366.22(b)(4) and (6)).

The preliminary assessment is a summary of salient points concerning the adoptability of the child and the suitability of the identified prospective adoptive family and becomes part of the CWS case record. (Please refer to All County Letter No. 91-32, dated April 8, 1991, for the type of general, non-identifying information that should be provided to the court.) As part of the CWS case record, the preliminary assessment is not governed by requirements of adoption case record confidentiality and is available to the child's attorney as well as the child's birth parents and their attorney in the juvenile court proceeding.

The decision regarding the adoptability of the child and the suitability of the identified prospective adoptive family is a mandated responsibility of the CWS agency supervising the child and the licensed county adoption agency or the State Department of Social Services (SDSS). The preliminary assessment is intended only to evaluate the general eligibility and commitment of the persons under consideration to become the child's adoptive parents. The preliminary assessment is not intended or required to be a complete and approved adoption home study. Neither is it intended to introduce into the dependency proceedings a means by which the court or the attorneys for the child or birth parents may assert any prerogative to determine the adoptability of the child or the suitability of the identified prospective adoptive family. These functions belong exclusively to the CWS agency responsible for the child and the licensed county adoption agency or the SDSS.

The purpose of the W&I Code Section 366.26 hearing is to facilitate a decision which will result in a stable, permanent home for the child. At the W&I Code Section 366.26 hearing, the court "...shall review the report as specified in Section 361.5, 366.21, or 366.22,..." (W&I Code Section 366.26(b)). Further, "The

court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted..." (W&I Code Section 366.26(c)(1)). The court will take into consideration the availability of a suitable family to adopt the child and the child's adoptability as determined by the adoption agency or the SDSS.

Adoption Case Record Confidentiality:

The child's adoption case record begins upon termination of parental rights and referral of the child by the court for adoptive placement. From this point forward, the requirements of adoption case record confidentiality apply, and a court order is needed for the adoption agency to release any identifying or specific information from its records regarding the child.

The adoptive family's adoption case record begins when the application from the prospective adoptive parents has been accepted by the adoption agency. This may occur following termination of parental rights regarding the child at the W&I Code Section 366.26 hearing. If the family already has an approved adoption home study, their adoption case record was established when their completed application for adoption was accepted by the adoption agency. From these points forward, the requirements of adoption case record confidentiality apply and a court order is needed for the adoption agency to release any identifying or specific information from its records regarding the child or family.

This restriction includes any request for psychological reports or medical reports on the child or family. However, if requested, the adoption agency may provide without court order a summary of relevant, nonidentifying information used to recommend approval or disapproval of the prospective adoptive parents.

Agencies should be mindful that adoption case record confidentiality issues are more significant and problematic when the CWS agency responsible for the child and the adoption agency are not part of the same county organizational structure. The same is true when the CWS agency responsible for the child is working with a licensed private adoption agency whose approved adoptive family is either interested in adopting the child or are currently the child's foster parents.

Court Dependent Children - Adoption Record Maintenance Prior to Adoptive Placement (or formal conversion of a foster placement to adoptive placement):

The preliminary assessment presented to the court at the W&I Code Section 366.26 hearing prior to the freeing of the child is not meant to be a complete, detailed adoption home study. Since it becomes part of the CWS case record, the information contained in the preliminary assessment is not governed by requirements of adoption case record confidentiality. As a result, the preliminary assessment becomes available to individuals who are not currently permitted access under adoption case record confidentiality requirements. Therefore, detailed information and supporting documents, which otherwise are subject to adoption case record confidentiality, should not be included in or attached to the preliminary assessment submitted to the court. CWS agencies

should take steps to ensure that information in the child's adoption case record, which is governed by adoption case record confidentiality, is not made part of the child's CWS case record, which is not governed by adoption case record confidentiality. However, subject to limitations discussed below, information used in preparation of the preliminary assessment, including copies of any evaluations or reports, may be shared on an oral basis with the child's CWS worker when requested.

If the child's current foster parents are under consideration as the prospective adoptive parents for the child, a certain amount of detailed information about them will already be part of the CWS case record. Although this information as part of the adoptions case record would be governed by adoption case record confidentiality it, as part of the CWS case record, would be available to parties in the juvenile court proceedings. Consequently, the preliminary assessment presented to the court at the W&I Code Section 366.26 hearing prior to the freeing of the child could contain more detailed information as long as that information was obtained from the CWS case record and not the adoptions case record.

If the CWS worker and adoptions case worker are the same person, care should be exercised to separate adoption case record information subject to adoption confidentiality from the CWS case record, which is accessible to persons not generally involved in adoptions proceedings. If necessary, a more general, nonidentifying summary of information from the adoption case record which is germane to the CWS/court dependency file should be developed for inclusion in the CWS case file.

In some instances, the adoption agency, public or private, has already completed a full home study on a family under consideration for the adoptive placement. In this circumstance, the preliminary assessment would continue to be only a brief, general overview as required by statute. However, it would emphasize that the family is already approved for adoptive placement.

If the general, nonidentifying information in the preliminary assessment is not sufficient for the court to make its determination and the judge indicates a need for copies of any reports or evaluations completed for purposes of the preliminary assessment, the CWS agency responsible for the child and the licensed county adoption agency or SDSS should respectfully request the additional information be given to the judge in camera in order to maintain the confidentiality of the information (See ACL 91-32.) If the child's CWS worker or attorneys want to see more than the overview, a court order is needed before the adoption agency can release copies of any reports or evaluations, the home study or any specific information therein completed for purposes of the preparation of the preliminary assessment. The information requiring a court order authorizing disclosure includes evaluations, reports, and all other documents upon which the written summary home study report is based.

Court Dependent Children - Maintenance of Adoption Case Record After Adoptive Placement:

After the court dependent child has been placed for adoption (including formal conversion of a foster placement to an adoptive placement), the court maintains the dependency until finalization of the adoption, and the county must continue to meet the CWS case management requirements described in the Department of Social Services, Manual of Policies and Procedures, Division 30. In view of this continuing jurisdiction, the adoption case worker may share limited adoption case record information, which will become part of the CWS case record, with the county CWS worker regarding factors that bear on the unsuitability of continued placement with the prospective adoptive family (e.g., relevant excerpts from, or summary of, a psychological report but not the entire report). To obtain any information from the adoption case record, which in the determination of the adoption agency is not directly relevant to the issue of appropriateness of continuing placement of the child, the county CWS agency must secure a court order directing the adoption agency to release the information. The term "relevant" in this situation is defined as any information (positive or negative) having a direct bearing on the child's well-being, health and safety or having direct impact on the determination of the family's suitability or capacity to parent or continue to act as caretakers for the particular child. However, this does not preclude the adoption agency, pursuant to Civil Code Section 229.20, from voluntarily sharing information relating to an adoption petition when the adoption agency determines it will promote the welfare of the child.

Please submit any questions regarding this subject to the Adoptions Policy Bureau, M.S. 19-67 at the above address.



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cc: CWDA